

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922

No. 181

H. H. BOHNING, PLAINTIFF IN ERROR,

vs.

THE STATE OF OHIO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

FILED OCTOBER 1, 1921.

(28,516)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 561.

H. H. BOHNING, PLAINTIFF IN ERROR,

vs.

THE STATE OF OHIO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

INDEX.

	Original.	Print.
Caption	<i>a</i>	1
Petition in error.....	1	1
Waiver of summons.....	3	2
Proceedings in the court of appeals of Cuyahoga County.....	4	3
Docket entries.....	4	3
Petition in error.....	5	3
Waiver of summons.....	6	4
Proceedings in the court of common pleas of Cuyahoga County.	7	4
Docket entries.....	7	4
Petition in error.....	8	5
Waiver of summons.....	9	6
Proceedings in the mayor's police court of Cuyahoga County...	10	6
Transcript of proceedings.....	10	6
Affidavit of Joseph A. Schmitt.....	12	7
Demurrer	13	8

	Original.	Pr
Motion in arrest of judgment.....	14	
Motion for new trial.....	14	
Bill of exceptions.....	15	
Return of the writ of error.....	18	
Petition for writ of error.....	19	
Order allowing writ of error.....	21	
Assignment of errors.....	22	
Writ of error.....	24	
Citation and service.....	26	
Stipulation as to record.....	27	
Bond on writ of error.....	28	
Docket entries.....	29	
Judgment	30	
Opinion	31	
Certificate of lodgment.....	35	
Clerk's certificate.....	36	

Supreme Court of Ohio.

No. 16493.

H. H. BOHNING, Plaintiff in Error,

vs.

THE STATE OF OHIO, Defendant in Error.

Error to the Court of Appeals, Cuyahoga County, Ohio.

RECORD.

Harry F. Wittenbrink,
Geo. B. Okey,
Timothy S. Hogan,
Attorneys for Plaintiff in Error.

John G. Price,
Attorney-General,
Attorney for Defendant in Error.

Filed Jan. 21, 1920. Supreme Court of Ohio. W. C. Lawrence,
Clerk.

Supreme Court of Ohio.

No. 16493.

H. H. BOHNING, Plaintiff in Error,

vs.

THE STATE OF OHIO, Defendant in Error.

Petition in Error.

[Filed January 8, 1920.]

Plaintiff in error says that on the 8th day of September, 1919, by the judgment of the Mayor's Police Court of the village of Garfield Heights, county of Cuyahoga and State of Ohio, he was found guilty by said court, and fined \$25.00 and costs, for a violation of the act of the general assembly of the State of Ohio, entitled "An act to supplement section 7762 of the General Code, by the addition of supplemental sections 7762-1, 7762-2, 7762-3 and 7762-4, and to repeal section 7729, concerning elementary, private and parochial schools and providing that instruction shall be in the English language," passed May 8, 1919, approved June 5, 1919; that a demurrer was interposed to the affidavit filed

against him in said court, which was overruled; that motions made by him in said court in arrest of judgment and for a new trial, were overruled; that error was prosecuted in the Common Pleas Court of Cuyahoga county, Ohio, where the judgment of said Mayor's Police Court was affirmed, and the petition in error was dismissed; that error was prosecuted in the Court of Appeals of Cuyahoga county, Ohio, where the judgments of the Common Pleas and Mayor's Police Court were, on the 7th day of November, 1919, affirmed.

A duly certified transcript of the final record in said Mayor's Police Court, a transcript of the docket and journal entries of said court of Common Pleas and of said Court of Appeals, together with the original papers filed in said case, are filed herewith and made a part of this petition in error.

There is error in said records and proceedings, in this, to-wit:

1. The said Mayor's Police Court erred in overruling the demurrer of this plaintiff in error to the affidavit filed against him, and in upholding the constitutional validity of said act of the general assembly.

2. The said Mayor's Police Court erred in overruling the motion of this plaintiff in error in arrest of judgment.

3. The said Mayor's Police Court erred in overruling the motion of this plaintiff in error for a new trial.

4. The said Mayor's Police Court erred in finding the defendant therein guilty.

3 5. The Common Pleas Court of Cuyahoga county, Ohio, erred in affirming the judgment of said Mayor's Police Court and in dismissing the petition in error of this plaintiff in error.

6. The Court of Appeals of Cuyahoga county, Ohio, erred in affirming the judgment of the Common Pleas Court of Cuyahoga county, Ohio, and the judgment of the Mayor's Police Court of Garfield Heights, Ohio, and in dismissing the petition in error of this plaintiff in error.

Plaintiff in error therefore prays that said judgments be reversed and that he be restored to all things he has lost by reason thereof.

HARRY F. WITTENBRINK,
GEO. B. OKEY,
TIMOTHY S. HOGAN,
Attorneys for Plaintiff in Error.

Waiver.

The defendant in error hereby waives the issuance and service of summons in error in this proceeding and hereby enters its appearance herein.

JOHN G. PRICE,
Attorney-General,
Attorney for Defendant in Error.

4 In the Court of Appeals, Cuyahoga County, Ohio.

[No. 2828.]

H. H. BOHNING, Plaintiff in Error,

vs.

THE STATE OF OHIO, Defendant in Error.

Transcript of Docket and Journal Entries.

1919, October 1.—Petition in error, waiver of process, transcript and original papers from Common Pleas filed.

1919, October 10.—Motion by plaintiff in error to advance case, with notice of motion filed.

1919, October 18.—Brief of plaintiff in error, with two copies filed.

October 17, 1919.—*To Court*: The motion to advance this case is heard and granted. Jour. 4, pg. 4.

November 7, 1919.—*To Court*: This cause came on to be heard upon the pleadings and the transcript of the record in the Court of Common Pleas, and was argued by counsel; and on consideration of all the assigned errors, the court being of the opinion that substantial justice has been done the party complaining, the judgment of the said Court of Common Pleas is affirmed. It is therefore considered that said defendant in error recover of said plaintiff in error its costs herein. Ordered that a special mandate be sent to the Court of Common Pleas, to carry this judgment into execution. The plaintiff in error excepts. Jour. 4, pg. 18.

5 [Duly certified.]

Petition in Error.

[Filed October 1, 1919.]

The plaintiff in error says that on the 8th day of September, A. D. 1919, in the Mayor's Police Court of Garfield Heights, county of Cuyahoga and State of Ohio, in a case then pending therein, wherein the State of Ohio was plaintiff, and he the plaintiff in error, was defendant, a judgment was rendered in favor of said the State of Ohio, and against him, the said H. H. Bohning.

The plaintiff in error further says that he duly prosecuted a proceeding in error in the Court of Common Pleas of said county of Cuyahoga to reverse said judgment of said Mayor's Police Court of Garfield Heights, Ohio, but that on the 27th day of September A. D. 1919, said Court of Common Pleas affirmed the same.

A duly certified transcript of the final record in said Mayor's Police Court, together with the bill of exceptions taken in said court, and a duly certified transcript of the docket and the journal entries of said Court of Common Pleas together with the original papers

filed in that court, are filed herewith and made a part of this petition in error.

The plaintiff in error avers that in said judgments and proceedings in said Mayor's Police Court and Court of Common Pleas there is manifest error, to his prejudice, to-wit:

- 6 1. The said Mayor's Police Court erred in overruling the demurrer of said H. H. Bohning to the affidavit and information.
2. The said Mayor's Police Court erred in overruling the motion of the said H. H. Bohning to arrest the judgment in said case.
3. The said Mayor's Police Court erred in overruling the motion of said H. H. Bohning for a new trial.
4. The said Mayor's Police Court in imposing sentence and rendering judgment against said H. H. Bohning.
5. The said Common Pleas Court erred in affirming the judgment of said Mayor's Police Court.
6. The said Court of Common Pleas erred in refusing to reverse said judgment of said Mayor's Police Court.
7. Other errors apparent on the record.

Wherefore: the plaintiff in error prays that the said finding and judgments of said Mayor's Police Court and said Court of Common Pleas may be reversed, and that the court make such other order as may be right in the premises.

GEORGE B. OKEY,
HARRY F. WITTENBRINK,
Attorneys for Plaintiff in Error.

Waiver.

The defendant in error hereby waives the issuance and service of summons in error in this proceeding and hereby enters its appearance herein.

SAMUEL DOERFLER,
Attorney for Defendant in Error.

7 In the Court of Common Pleas, Cuyahoga County, Ohio

[No. 17056.]

H. H. BOHNING, Plaintiff in Error,

vs.

STATE OF OHIO, Defendant in Error.

Transcript of Docket and Journal Entries.

1919, September 9.—Transcript and original papers from Joseph A. Schmidt, police justice of Garfield Heights.

1919, September 9.—To Court: Leave is hereby granted the plaintiff in error, to file a petition in error. Jour. 29, pg. 18.

1919, September 9.—Bill of exceptions filed.

September 9.—Petition in error and waiver of summons filed.

September 27, 1919.—To Court: This cause came on for hearing upon the petition in error, the transcript, and the original papers and pleadings from the court below, and was argued by counsel; on consideration whereof, the court find that there is no error apparent on the record in said proceedings and judgment. Jour. 29, pg. 107.

1919, October 1.—To Court: Appeal bond in this case is fixed in the sum of \$200.00. This day comes the plaintiff in error herein and gives recognizance No. 16317 in the sum of \$200.00 with
8 Fred Albers, as surety. Jour. 29, pg. 119.

October 1, 1919.—Petition in error filed in Court of Appeals by plaintiff in error.

[Duly certified.]

Petition in Error.

[Filed September 9, 1919.]

The plaintiff in error says: That on the eighth day of September, A. D. 1919, in the Mayor's Police Court of Garfield Heights, Cuyahoga county, Ohio, in a case then pending therein, wherein the State of Ohio was plaintiff, and he, the plaintiff in error, was defendant, a judgment was rendered in favor of the said the State of Ohio and against him, the said H. H. Bohning.

A duly certified transcript of the final record, together with the bill of exceptions are filed herewith and made a part of this petition in error.

The plaintiff in error avers that in said judgment and proceedings in said Mayor's Police Court there is manifest error to his prejudice; to-wit:

1. The said court erred in overruling the demurrer of said H. H. Bohning to the affidavit and information;
2. The said court erred in overruling the motion of said H. H. Bohning to arrest the judgment in said case.
3. The said court erred in overruling the motion of said H. H. Bohning for a new trial.
4. The said court erred in imposing sentence and rendering judgment against said H. H. Bohning.
5. Other errors apparent on the record.

9 Wherefore the plaintiff in error prays: That, the said finding and judgment of said Mayor's Police Court may be

reversed, and that the court make such other order as may be right and proper in the premises.

GEO. B. OKEY,
HARRY F. WITTENBRINK,
Attorneys for Plaintiff in Error.

Waiver.

The defendant in error hereby waives the issuance and service of summons in error in the foregoing proceeding, and hereby enters its appearance herein.

SAMUEL DOERFLER,
Attorney for Defendant in Error.

10 In the Mayor's Police Court, Garfield Heights, Cuyahoga County, Ohio.

[No. 129.]

THE STATE OF OHIO

vs.

H. H. BOHNING.

Transcript.

September 8, 1919.

This day came Henry Weber, who, being first duly sworn according to law, deposes and says: That on or about the eighth day of September, A. D. 1919, at the county of Cuyahoga and in the village of Garfield Heights in said county, H. H. Bohning, H. F. Rahn and August Koenig, being then and there the duly authorized and acting board of trustees of a certain private or parochial school, conducted in the premises known as St. John's Evangelical Lutheran-Congregation School, at the corner of Granger road and Turney road in said village of Garfield Heights, did order and cause one Emil Pohl, a teacher in the employ and under the control of said board of trustees, to teach the German language in said school, who has not completed a course of study equivalent to that prescribed in the first seven grades of the Elementary schools of the State of Ohio and that said Emil Pohl, in obedience to said order, did teach the

11 German language, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

(Signed)

HENRY WEBER.

Sworn to before me by the said Henry Weber and by him subscribed in my presence this eighth day of September, A. D. 1919.

(Signed)

JOSEPH A. SCHMITT,
Police Justice.

Complaint filed.

Warrant issued to Henry Weber, marshal of said village of Garfield Heights, for the defendant, H. H. Bohning, who made return as follows, to wit:

September 8, 1919.

I took the body of the within named H. H. Bohning and have him before the magistrate within named.

(Signed)

HENRY WEBER,
Marshal.

September 8, 1919.—Defendant demurred and filed a written demurrer to the information and affidavit. Argued by counsel. Counsel for defendant filed a written brief in support of said demurrer.

To Court: Demurrer overruled; to which finding, decision and ruling of the court the defendant, by his counsel, then and there excepted; exceptions noted.

The defendant, H. H. Bohning, being now brought before me to answer said complaint, pleaded "not guilty," and in a writing subscribed by him duly filed, waived a jury and submitted to be tried for the offense charged in said complaint by me.

Having heard the evidence, the court finds the said H. H. Bohning guilty as charged in the affidavit.

September 8, 1919.—Motion in arrest of judgment filed by defendant.

12 September 8, 1919.—Motion for a new trial filed by the defendant.

Both motions argued by counsel for defendant.

September 8, 1919.—To Court: Motion in arrest of judgment and motion for a new trial overruled. Defendant excepts and exceptions noted.

Defendant ordered to pay a fine to the State of Ohio in the sum of \$25 and the costs of this prosecution.

September 8, 1919.—Defendant gave notice of his intention to apply for leave to file a petition in error.

To Court: Ordered that the said defendant be released on his personal recognizance and that execution of this sentence be suspended until further order.

September 8, 1919.—Defendant presented his bill of exceptions.

To Court: Bill of exceptions allowed, signed and sealed by the court and is made a part of the record of this case, but is not to be recorded or spread at large upon the journal.

September 8, 1919.—Bill of exceptions filed.

[Duly certified.]

Affidavit.

THE STATE OF OHIO,
Cuyahoga County, ss:

Before me Joseph A. Schmidt justice of Mayor's Police Court, Garfield Heights village personally came Henry Weber who, being

first duly sworn according to law, deposes and says: That, on or about the 8th day of September A. D. 1919, at the county of Cuyahoga, and in the village of Garfield Heights in said county.

13 H. H. Bohning, H. F. Rahe and August H. Koenig being then and there the duly authorized and acting board of trustees of a certain private or parochial school, conducted in the premises known as St. John's Evangelical Lutheran Congregation School, at the corner of Granger Road and Turney Road in said village of Garfield Heights did order and cause one Emil Pohl a teacher in the employ and under the control of said Board of Trustees, to teach the German language to pupils in said school, who had not completed a course of study equivalent to that prescribed in the first seven grades of the elementary schools of the State of Ohio, and that said Emil Pohl in obedience of said order did teach the German language contrary to the form of the state in such case made and provided and against the peace and dignity of the State of Ohio.

HENRY WEBER.

Sworn to before me by the said Henry Weber and by him subscribed in my presence this 8th day of September, A. D. 1919.

JOSEPH A. SCHMITT,

Police Justice.

Demurrer to Information.

[Filed September 8, 1919.]

The said H. H. Bohning, demurs to the information and affidavit because the facts stated therein do not constitute an offense against the laws of the State of Ohio.

GEO. B. OKEY,

HARRY F. WITTENBRINK,

Attorneys for Defendants.

14

Motion in Arrest of Judgment.

[Filed September 8, 1919.]

Now come the defendant, H. H. Bohning, and moves the court to arrest the judgment in this case, for the reason that the facts stated in the information and affidavit do not constitute an offense.

GEO. B. OKEY,

HARRY F. WITTENBRINK,

Attorneys for Defendants.

Motion for New Trial.

[Filed September 8, 1919.]

The defendant, H. H. Bohning, now comes and moves the court for a new trial in this case, for the reasons following; to-wit:

1. The finding of conviction is contrary to the evidence;

2. The finding of conviction is contrary to law;
3. Other errors apparent on the record.

GEO. B. OKEY,
HARRY F. WITTENBRINK,
Attorneys for Defendants.

15

Bill of Exceptions.

[Filed September 8, 1919.]

Be it remembered: That, on the 8th day of September A. D. 1919, this cause came on to be heard before Honorable Joseph A. Schmitt judge of said court, upon the demurrer of the defendants to the information and affidavit: On consideration whereof, the court overruled said demurrer, to which ruling the defendants then and there, by their counsel, at the time excepted and still except.

Thereupon, on the same day, the case came on for trial, and the jury being waived, counsel representing the State and the defendants, in open court, entered upon the following stipulation and agreed statement of facts:

"It is hereby stipulated and agreed by and between counsel on behalf of the State and the defendants that a jury be waived and that the case be submitted to the court, upon the following agreed facts:

"On the 8th day of September, 1919, the said H. H. Bohning, H. F. Rahe and August H. Koeing constituted the board of trustees of a certain parochial and private school known as St. John's Evangelical Lutheran Congregation School, located at the corner of Granger road and Turney road, in the village of Garfield Heights, county of Cuyahoga and State of Ohio, and that on said day the said H. H. Bohning, H. F. Rahe and August H. Koeing, being then and there the duly authorized Board of Trustees of said afore-

16 said school, did order and cause one, Emil Pohl, a teacher under the control of said Board of Trustees, to teach the German language to the pupils in said parochial school who had not completed a course of study equivalent to that prescribed in the first seven grades of the elementary schools of the State of Ohio; and that said Emil Pohl, in obedience to said order did teach the German language and that said parochial school is maintained by the voluntary contributions of the pupils and their parents and others interested in the educational purposes of the Evangelical Lutheran Church, but that said school is free, open and available to all persons, without discrimination or distinction, creed, condition, race or otherwise." That the said St. John's Evangelical Lutheran Congregation School being a parochial and private school does not receive any part of the public school funds of the State of Ohio."

And there was no other evidence offered, introduced or admitted by either the State or defendants in the trial of this case, the fore-

going stipulation and agreed statement of facts being all the evidence given or offered by either side upon the trial.

Whereupon, a jury having been waived by the defendants, the court found the defendants guilty, as charged in the information, as appears of record in the case; and the defendants thereafter, within three days, filed a motion in arrest of judgment and a motion to set aside the said finding, judgment and decision and for a new trial, and the same was argued by counsel and submitted to the court, which, upon consideration, overruled the same, as appears of record.

17 And the defendants thereupon, at the time, excepted to the ruling *and* the court in overruling said motion in arrest of judgment and for a new trial, and still except. Bill of exceptions, p. 2.

And the court thereupon imposed sentence upon the defendants, as appears of record, to which sentence and judgment the defendants thereupon at the time excepted and still except.

The defendants thereupon presented this their bill of exceptions and prayed that the same be allowed, signed, sealed and filed as a part of the record in said case, but not spread at large upon the journal, according to the statute in such case made and provided, all of which is accordingly done this 8th day of September, A. D. 1919.

JOSEPH A. SCHMITT,
Police Justice.

18 UNITED STATES OF AMERICA, ss:

Supreme Court of Ohio.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the Seal of said Supreme Court of Ohio, in the City of Columbus, this 19th day of September, A. D. 1921.

[Seal of the Supreme Court of the State of Ohio.]

W. C. LAWRENCE,
Clerk of the Supreme Court of Ohio.

19

In the Supreme Court of Ohio.

No. 16493.

H. H. BOHNING, Plaintiff in Error,

vs.

THE STATE OF OHIO, Defendant in Error.

Petition of H. H. Bohning for Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Ohio.

To the Honorable C. T. Marshall, Chief Justice of the Supreme Court of the State of Ohio:

H. H. Bohning, Plaintiff in Error in the above entitled cause, shows by this Petition to this Honorable Court, that in the records, proceedings and decisions in the Supreme Court of the State of Ohio, the same being the highest court of said State in which a decision could be had in this suit, manifest error has occurred, greatly to the damage of said H. H. Bohning.

That, as appears in the record and proceedings, there was drawn in question the validity of an Act of the General Assembly of the State of Ohio, passed May 8, 1919, and approved by the Governor, June 5, 1919, entitled:

“An Act

To supplement section 7762 of the General Code by the addition of supplemental sections to be known as sections 7762-1, 7762-2, 7762-3, and 7762-4, and to repeal section 7729, concerning elementary, private, and parochial schools, and providing that instruction shall be in the English language.”

Said H. H. Bohning further says that in this cause, on the 7th day of June, 1921, final judgment was rendered against him by the Supreme Court of the State of Ohio, that being the highest court of law in said State of Ohio, wherein it was adjudged that the Court of Appeals of Cuyahoga County, Ohio, did not err in its judgment affirming the judgment of the Court of Common Pleas of Cuyahoga county, Ohio, which latter Court affirmed the judgment of the Mayor's Police Court of Garfield Heights, Cuyahoga county, Ohio, and held that said Mayor's Police Court did not err at the trial of said cause in said court in sustaining the validity of said Act; and said Supreme Court of the State of Ohio therein affirmed the judgment of said Court of Appeals and said lower courts; and in said cause further adjudged that said Act of the General Assembly of the State of Ohio was a valid law, and the conviction of said H. H. Bohning thereunder was not repugnant to Section 1 of Art. XIV, being the Fourteenth Amendment to the Constitution of the United States, which ordains:

* * * "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

All of which, to the prejudice of said H. H. Bohning fully appears in the records and proceedings of the case and is specifically set forth in the assignment of errors filed herewith.

Wherefore your petitioner prays for an allowance of a Writ of error from the Supreme Court of the United States to the Supreme Court of the State of Ohio and the Judges thereof, to the end that the record in this case may be removed into the Supreme Court of the United States and the errors complained of by your petitioner may be examined and corrected and said judgment reversed, and said cause remanded, as provided by law; and that your petitioner may have such other and further relief in the premises as may be adjudged; and your petitioner will ever pray.

(Signed)

H. H. BOHNING,
By TIMOTHY S. HOGAN AND
GEO. B. OKEY,
His Attorneys.

The Writ of Error as prayed in the foregoing Petition is hereby allowed this 29th day of August, 1921.

Dated at the City of Columbus, Ohio, this 29th day of August, 1921.

C. T. MARSHALL,
*Chief Justice of the Supreme Court
of the State of Ohio.*

20½ [Endorsed:] 16493. Filed Aug. 29, 1921. Supreme Court of Ohio. W. C. Lawrence, Clerk.

21 In the Supreme Court of Ohio.

No. 16493.

H. H. BOHNING, Plaintiff in Error,

vs.

THE STATE OF OHIO, Defendant in Error.

Order Allowing Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Ohio.

On this 29th day of August, 1921, the application of H. H. Bohning, Plaintiff in Error and the State of Ohio, Defendant in Error, for a Writ of Error, came on to be heard, and it appearing to the Court from the Petition filed herein and from the record and the

proceedings filed therewith that said application should be granted, and that a transcript of the record, proceedings and papers, upon which the judgment of the Court was rendered, properly certified, should be sent to the Supreme Court of the United States in accordance with the prayer of said Petition in order that such proceedings may be had as may be just and proper:

Now, therefore, it is ordered that the Writ of Error be allowed, and that a true copy of the record, Assignment of Errors, and all proceedings in the case of the Supreme Court of the State of Ohio shall be transmitted to the Supreme Court of the United States duly certified according to law, in order that said Court may inspect the same and take such action therein as it deems proper according to law.

C. T. MARSHALL,
*Chief Justice of the Supreme Court
 of the State of Ohio.*

Journal 28 page 694.

21½ [Endorsed:] 16493. Filed Aug. 29, 1921. Supreme Court of Ohio. W. C. Lawrence, Clerk.

22 In the Supreme Court of Ohio.

No. 16493.

H. H. BOHNING, Plaintiff in Error,

vs.

THE STATE OF OHIO, Defendant in Error.

Assignment of Errors on Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Ohio.

Now comes H. H. Bohning in connection with his petition for a Writ of Error herein, and respectfully submits that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Ohio in the above entitled case, there is manifest error in this to wit:

First. The Supreme Court of the State of Ohio erred in affirming the judgment of the Court of Appeals of Cuyahoga county, Ohio, and in refusing to reverse said judgment and remand the cause to the Court of Appeals of Cuyahoga county, Ohio, for further proceedings.

Second. The Supreme Court of the State of Ohio should have found that said Court of Appeals of Cuyahoga county, Ohio, erred in affirming the judgment of the Court of Common Pleas of Cuyahoga county, Ohio, affirming the judgment of the Mayor's Police Court of Garfield Heights, Cuyahoga county, Ohio, convicting said H. H. Bohning with having violated an Act of the General Assembly of the State of Ohio passed May 8, 1919, approved June 5, 1919, entitled:

“An Act

23 To supplement section 7762 of the General Code, by the addition of supplemental sections to be known as sections 7762-1, 7762-2, 7762-3, and 7762-4, and to repeal section 7729, concerning elementary, private, and parochial schools, and providing that instruction shall be in the English language.”

Third. The judgment of the said Supreme Court of Ohio was given for said State of Ohio when it should have been given in favor of said H. H. Bohning.

Fourth. The judgment of the Supreme Court of the State of Ohio, in this case, is in contravention of Section 1 of Art. XIV, being the Fourteenth Amendment to the Constitution of the United States, which declares:

* * * “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Fifth. The Supreme Court of the State of Ohio erred in holding that the Act of the General Assembly of the State of Ohio passed May 8, 1919, approved June 5, 1919, entitled:

“An Act

To supplement section 7762 of the General Code by the addition of supplemental sections to be known as sections 7762-1, 7762-2, 7762-3, and 7762-4, and to repeal section 7729, concerning elementary, private and parochial schools, and providing that instruction shall be in the English language,”

was not in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States, notwithstanding said Act, and the conviction of said H. H. Bohning thereunder, assumes to deprive and to deny to said H. H. Bohning the privilege and immunity as a citizen of the United States, and of his liberty as such citizen, without due process of law, to instruct pupils in the German Language, in private and parochial schools, who have not completed a course of study equivalent to that prescribed for the first seven grades of the elementary schools of the State of Ohio.

TIMOTHY S. HOGAN,
GEO. B. OKEY,
Attorneys for H. H. Bohning.

23½ [Endorsed:] 16493. In the Supreme Court of Ohio.
H. H. Bohning, Plaintiff in Error, vs. The State of Ohio,
Defendant in Error. Assignment of Errors. Filed Aug. 29, 1921.
Supreme Court of Ohio, W. C. Lawrence, Clerk.

In the Supreme Court of Ohio.

No. 16493.

H. H. BOHNING, Plaintiff in Error,

vs.

THE STATE OF OHIO, Defendant in Error.

*Writ of Error from the Supreme Court of the United States to the
Supreme Court of the State of Ohio.*

THE UNITED STATES OF AMERICA, ss:

We the President of the United States of America to the Honorable
Judges of the Supreme Court of the State of Ohio, Greeting:

Whereas, in the record and proceedings and in the rendition of
the judgment in the above entitled cause which is now before you,
some of you, between H. H. Bohning, Plaintiff in Error, and the
State of Ohio, Defendant in Error, your court being the highest
court of said State of Ohio having jurisdiction of the cause, there
has been drawn in question the validity of a statute of the State of Ohio
and an authority exercised under said statute, on the ground of its
being repugnant to the Constitution of the United States, and the
decision is in favor of its validity; and whereas there is manifest
error in said judgment to the great damage of said H. H. Bohning;
and whereas we are willing that if there is error it should be duly
corrected, we command you therefore, if judgment be given therein,
that you send under seal of your court the record and proceedings
in said cause to the Supreme Court of the United States together with
this Writ, within such time as may be necessary, in order that you
may have the same in Washington on the 5th day of October,
1921, in the said Supreme Court of the United States, to be
then and there held, that the record and proceedings aforesaid
may be then inspected by the Supreme Court of the United States
and that said Supreme Court of the United States may cause further
to be done therein, to correct that error, what of right and according
to the law and custom of the United States ought to be done.

(Witness) The Honorable William H. Taft, Chief Justice of the
Supreme Court of the United States, the 5 day of September, A. D.,
1921.

[Seal of United States District Court, Southern Dis., Ohio.]

B. E. DILLEY,

*Clerk of the United States District Court for the
Southern District of Ohio, Eastern Division.*

Allowed

C. T. MARSHALL,

Chief Justice of the Supreme Court of Ohio.

25½ [Endorsed:] Filed Sep. 5, 1921. Supreme Court of Ohio.
W. C. Lawrence, Clerk.

26 In the Supreme Court of the United States.

No. 16493.

H. H. BOHNING, Plaintiff in Error,

vs.

THE STATE OF OHIO, Defendant in Error.

Citation.

THE UNITED STATES OF AMERICA, ss:

To Honorable John G. Price, Attorney General of the State of Ohio, and to Honorable Edward C. Stanton, Prosecuting Attorney of Cuyahoga County, Ohio, Greetings:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the City of Washington in the District of Columbia, on the — day of —, A. D. 1921, pursuant to a Writ of Error filed in the Clerk's office of the Supreme Court of the State of Ohio from a final judgment signed, filed and entered therein on the 7th day of June, 1921, in a proceeding therein pending wherein H. H. Bohning is Plaintiff in Error and the State of Ohio is Defendant in Error, to show cause if any there be why the judgment rendered against said H. H. Bohning as in said Writ of Error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

C. T. MARSHALL,
*Chief Justice of the Supreme Court
of the State of Ohio.*

Dated this 29th day of August, 1921.

Copy of the above Citation received this 2nd day of September 1921, at Columbus, Ohio, and the appearance of the State of Ohio is hereby entered.

Attorney-General of the State of Ohio.
EDWARD C. STANTON,
Prosecuting Attorney of Cuyahoga County, Ohio.

26½ [Endorsed:] 16493. Filed Sep. 19 1921. Supreme Court of Ohio, W. C. Lawrence, Clerk.

27 In the Supreme Court of the United States.

No. 16493.

H. H. BOHNING, Plaintiff in Error,

vs.

THE STATE OF OHIO, Defendant in Error.

Stipulation as to Transcript of Record.

Columbus, Ohio, August 31st, 1921.

The undersigned counsel for the respective parties in this cause hereby stipulate that the Clerk of the Supreme Court shall make a transcript of, and shall certify and transmit the entire record in this cause, including all pleadings, opinions and proceedings in this court and a certified copy of the docket and journal entries in this court.

TIMOTHY S. HOGAN,

GEO. B. OKEY,

Attorneys for H. H. Bohning.

_____,
Attorney General of Ohio.

EDWARD C. STANTON,

Prosecuting Attorney of Cuyahoga County, Ohio.

27½ [Endorsed:] Filed Sep. 19 1921. Supreme Court of
Ohio, W. C. Lawrence, Clerk.

28 #17493.

Know all men by these presents, That we, H. H. Bohning, as principal, and Royal Indemnity Co., as sureties, are held and firmly bound unto The State of Ohio in the full and just sum of two hundred and fifty (\$250.00) dollars, to be paid to the said obligee and its certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 7th day of September, in the year of our Lord one thousand nine hundred and twenty-one.

Whereas, lately at the January, 1921, term of the Supreme Court of the State of Ohio in a suit depending in said court, between H. H. Bohning, plaintiff-in-error, and the State of Ohio, defendant-in-error, a judgment was rendered against the said H. H. Bohning, and the said H. H. Bohning having obtained a writ of error and filed a copy thereof in the Clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Honorable John G. Price, Attorney General of the State of Ohio, and to Honorable Edward C. Stanton, Prosecuting Attorney of Cuyahoga County, Ohio, citing and admonishing them to be and

appear at the Supreme Court of the United States, at Washington within — days from the date thereof.

Now, the condition of the above obligation is such, That if the said H. H. Bohning shall prosecute his said writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

H. H. BOHNING, [SEAL.]
 ROYAL INDEMNITY CO., [SEAL.]
 By L. J. O'DONNELL, [SEAL.]
Attorney-in-fact.

Sealed and delivered in presence of

EDWARD P. HOGAN.
 T. S. HOGAN.

Approved by—

C. T. MARSHALL,
*Chief Justice of the Supreme
 Court of the State of Ohio.*

28½ [Endorsed:] 17493. Application made Sept. 7th, 1921.
 C. T. Marshall, Chief Justice. H. H. Bohning vs. State of
 Ohio. Copy of Bond. Filed Sep. 8, 1921. Supreme Court of
 Ohio, W. C. Lawrence, Clerk.

29 Supreme Court of the State of Ohio, January Term, A. D.
 1919.

(Minute Book No. 35, Page 293.)

Number 16493.

Title of Case.

H. H. BOHNING, Plaintiff in Error,

vs.

THE STATE OF OHIO, Defendant in Error.

Action: Error to the Court of Appeals of Cuyahoga County.

Attorneys: Harry F. Wittenbrink, Cleveland; George B. Okey
 T. S. Hogan, Columbus, Ohio, for plaintiff in error.

John G. Price, Attorney General, Columbus, Ohio; E. C. Staton,
 Prosecuting Attorney, R. A. Baskin, F. J. Merrick, Cleveland,
 Ohio, for defendant in error.

Transcript of Docket Entries, Memoranda of Pleadings, &c., Filed, Writs Issued, Judgments, Orders, and Decrees.

1920.

- Jan. 8. Petition in Error and Waiver of Summons filed.
 " " Court of Appeals transcript, original papers and bill of exceptions filed.
 " " Papers taken by Toothaker & Rodenfels. 1.29/20—Returned.
 " 21. Printed Record (12) filed; 1/22/20—Proof of service filed.
 Mar. 9. Entry for extension of time to file brief, filed.
 " " * * * Order extending time for Plaintiff's Printed Briefs to May 17, 1920—by consent. H. L. Nichols, C. J. Journal 28, page 392.
 May 15. Consent entry extending time to file briefs, filed.
 " " * * * Order extending time for plaintiff's briefs to July 1, 1920. Nichols, C. J. Journal 28, page 429.
 Jun. 30. Plaintiff's printed briefs filed. 7/1/20—Proof of service filed.
 Dec. 17. Defendant's printed briefs filed. 12/20/20—Proof of service filed.

1921.

- Feb. 23. Plaintiff's Printed Reply. Briefs filed.
 Jun. 7. * * * Judgment Affirmed. Journal 28, page 646.
 Jun. 14. Mandate Issued.
 " " Original papers sent to Clerk.
 Aug. 29. Petition for writ of error from Supreme Court of United States to Supreme Court of Ohio, filed.
 " " Assignment of Errors and an order of allowance by Chief Justice C. T. Marshall, filed.
 Aug. 29. * * * Order allowing writ of error. C. T. Marshall, C. J. Journal 28, page —.
 Sep. 5. Writ of Error filed.
 " " Petition for writ, Assignment of errors and writ of error taken by Hogan and Hogan.
 " 8. Bond on writ of error with Royal Indemnity Company of New York, as surety filed.
 " 19. Stipulation as to transcript of record filed.
 " " Citation and entry of appearance of defendant filed.

Transcript of Journal Entries.

No. 16493.

H. H. BOHNING

vs.

THE STATE OF OHIO.

1920.

March 9. "On application, the time within which the plaintiff in error is required to file his printed brief or argument herein is hereby extended until the 17th day of May 1920.

Approved:

HUGH L. NICHOLS,
Chief Justice."

Journal 28, page 392.

May 18. "On application, the time for filing brief of the plaintiff in error herein is extended to the first day of July 1920.

Approved:

HUGH L. NICHOLS,
Chief Justice."

Journal 28, page 429.

1921.

June 7. "This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Cuyahoga County, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said Court of Appeals be and the same is hereby affirmed; and it appearing to the Court that there were reasonable grounds for this proceeding in error, it is ordered that no penalty be assessed herein. It is further ordered that the defendant in error recover from the plaintiff in error its costs herein expended, taxed at \$—. Ordered, That a special mandate be sent to the Common Pleas Court of Cuyahoga County, to carry this judgment into execution. Ordered, That a copy of this entry be certified to the Clerk of the Court of Appeals of Cuyahoga County "for entry."

Journal 28, page 646.

31

16493.

(Nos. 16492 and 16493—Decided June 7, 1921.)

POHL

v.

THE STATE OF OHIO.

BOHNING

v.

THE STATE OF OHIO.

Error to the Court of Appeals of Cuyahoga County.

Constitutional law—Compulsory education—Teaching by English language only—Sections 7762-1 and 7762-2, General Code—German language prohibited, when—Public, private and parochial schools.

The plaintiff in error in each of the above entitled causes was convicted and sentenced to pay a fine of twenty-five dollars and costs in the mayor's police court of the village of Garfield Heights, Cuyahoga county, Ohio, Emil Pohl, having been a teacher, and H. H. Bohning, a member of the board of trustees, of a certain parochial school, known as St. John's Evangelical Lutheran Congregational School, in the village of Garfield Heights, it appearing that Pohl did on the 8th day of September, 1919, in said village, impart instructions in and teach the German language to pupils in such school who had not completed a course of study equivalent to that prescribed in the first seven grades of the elementary schools of the state of Ohio, and that Bohning, as a member of the board of trustees of such school, did cause Pohl to impart instruction and teaching as aforesaid, contrary to the provisions of Sections 7762-1, 7762-2 and 7762-3, General Code. Error was prosecuted to the common pleas court, where the judgment of the mayor's court was affirmed; error prosecuted to the court of appeals, where the judgments of the common pleas court and the mayor's court were affirmed; and error prosecuted here to the judgments of the courts below, the only question here made being as to the constitutionality of the sections of the Code above referred to.

Mr. Harry F. Wittenbrink; Mr. George B. Okey and Mr. Timothy S. Hogan, for plaintiffs in error.

Mr. John G. Price, attorney general; Mr. R. A. Baskin, prosecuting attorney; and Mr. Frank J. Merrick, assistant prosecuting attorney, for defendant in error.

By the COURT:

While much consideration in arguments and briefs has been given to the wisdom of the provisions of Sections 7762-1 and 7762-2,

General Code, this court is of opinion that such argument might better be addressed to the legislative branch of the government.

Courts do not sit to review the wisdom of legislative acts, nor do they possess such power. On the contrary, the policy, the advisability, and the wisdom of all legislation, subject to the veto of the governor and the referendum of the people, are subjects for legislative determination exclusively. The inexpediency, injustice or impropriety of a legislative act are not grounds upon which the court may declare the act void. The remedy for such evils must be sought by an appeal to the justice and patriotism of the legislature itself.

Except as limited by the Federal and State Constitutions, the power of the general assembly to legislate is inherent and unlimited and covers the whole range of legitimate legislation.

If the general assembly in the exercise of its power to legislate enacts laws necessary for the welfare of society, and thereby makes unlawful conduct theretofore lawful, such legislation will not be held to be unconstitutional simply because it forbids the doing of things theretofore permitted. The enjoying and defending life and liberty and seeking and obtaining happiness do not contemplate that they shall be enjoyed, sought and obtained as they were enjoyed, sought and obtained by primitive man, but that they shall be enjoyed, sought and obtained with such regard to the rights of society as the common welfare, as defined by the legislature, requires. It is upon this theory that our system of government exists.

The legislation in question is of equal application to every pupil of the state who has not completed a course of study equivalent to that prescribed in the first seven grades of the elementary schools, regardless of nationality, ancestry, or place of birth, and is, therefore, of equal operation upon every person within the designated grade.

33 The constitutionality of the act under consideration is, therefore, dependent upon whether the common welfare required such legislation. The legislature is presumed to have had before it such information with reference to the effect of the teaching of the German language to the youth of the state below the eighth grade as justified it in concluding that the common welfare required the prohibition of such teaching to such youth, and if the legislature found such facts to exist as to warrant it in the enactment of the sections in question it is not within the province of a court to redetermine the existence or nonexistence of such facts, even though the court might upon such redetermination reach a different conclusion. If under any possible state of facts the sections would be constitutional, this court is bound to presume that such facts exist.

No principle is better established by the decisions of the federal and state courts than that the possession and enjoyment of all rights are subject to such reasonable regulations as are deemed by the legislative authority to be essential to the welfare of the state, and every intendment is to be made in favor of the validity and lawfulness of such regulations unless they are clearly unreasonable and violative of some express provision of the constitution.

For these reasons we are unable to reach the conclusion that

Sections 7762-1 and 7762-2 are unconstitutional, and the judgment of the court of appeals will, therefore, be affirmed.

Judgment affirmed.

Marshall, C. J., Johnson, Hough, Wanamaker, Robinson, Jones and Matthias, JJ., concur.

34 STATE OF OHIO,
 City of Columbus:

Supreme Court of the State of Ohio, of the Term of January, A. D., 1921.

I, J. L. W. Henney, Reporter of the Supreme Court of Ohio, do hereby certify that the foregoing transcript, consisting of three (3) pages, constitutes a full, true and correct copy of the per curiam opinion of the Supreme Court of Ohio (concurring in by Marshall, C. J., Johnson, Hough, Wanamaker, Robinson, Jones and Matthias, JJ.), in Cause No. 16493, Bohning v. The State of Ohio, as the originals thereof appear on file and of record in this office, as of the date of this certificate.

In witness whereof, I have hereunto subscribed my name and affixed the Seal of said Supreme Court this 29th day of August, A. D., 1921.

[Seal of the Supreme Court of the State of Ohio.]

J. L. W. HENNEY,
Reporter.

35 *Certificate of Lodgment.*

STATE OF OHIO, ss:

Supreme Court.

I, Wilbur C. Lawrence, Clerk of the said Court, do hereby certify that there was lodged with me as said Clerk, on the date set forth below, in the case of H. H. Bohning, Plaintiff in Error vs. The State of Ohio, Defendant in Error,

1. Two copies of the writ of error, as herein set forth, one for the defendant in error and one to file in my office, the same being lodged with me on August 29th, 1921.

2. The original bond, a copy of which is herein set forth, the same being lodged with me on September 7th, 1921, and presented to the Chief Justice, Hon. C. T. Marshall on that date, and returned and filed in my office on September 8th, 1921.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said Court at my office in Columbus, Ohio, this 19th day of September, A. D. 1921.

[Seal of the Supreme Court of the State of Ohio.]

W. C. LAWRENCE,
Clerk of the Supreme Court of Ohio.

Supreme Court of the State of Ohio.

No. 16493.

H. H. BOHNING, Plaintiff in Error,

vs.

THE STATE OF OHIO, Defendant in Error.

Authentication of Record.

THE STATE OF OHIO,
City of Columbus, ss:

I, Wilbur C. Lawrence, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing petition for writ of error, assignment of errors, order allowing writ of error, writ of error, citation to defendant and entry of appearance, and stipulation as to transcript of record are the original papers filed in this Court in the above entitled cause; that the foregoing copy of the bond is a true copy of the bond filed in said cause; that the printed copy of the record attached hereto is a true copy of the printed record filed in said cause; that the foregoing transcript of docket and journal entries is truly taken and correctly copied from the Records of said Court, and that a duly certified copy of the opinion of the Supreme Court of Ohio is hereto attached.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said Supreme Court of Ohio this 19th day of September, A. D. 1921.

[Seal of the Supreme Court of the State of Ohio.]

W. C. LAWRENCE,
Clerk of the Supreme Court of Ohio.

Endorsed on cover: File No. 28,516. Ohio Supreme Court Term No. 561. H. H. Bohning, plaintiff in error, vs. The State of Ohio. Filed October 1st, 1921. File No. 28,516.